IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

Crl.MC.No. 1783 of 2007()

CMP.671/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA
CRIME NO.4/07 OF EXCISE RANGE, ANGAMALY.

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PETITIONER: CLAIM PETITIONER

REJI.M.S., AGED 34,
S/O.SUBRAMANIAN, MENONPARAMBIL (H),
EAST KADUNGALLOOR, U.C.COLLEGE P.O.,
ALUVA.

BY ADV. SRI.P.SHAIJAN JOSEPH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, ANGAMALY RANGE,
ANGAMALY, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY P.P. SRI. S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1783 OF 2007

Dated this the 7th day of June, 2007

ORDER

The petitioner claims to be the owner entitled to possession of a Maruthi Omni van which was seized by the Excise officials on the allegation that it was used for illicit transportation of liquor. The person who was arrested from the vehicle is one who is involved in, at least, three excise crimes, alleged the police.

2. The petitioner applied for release of the vehicle before the learned Magistrate. The application was opposed. The learned Magistrate rejected the same on the ground that the offence is triable exclusively by a Court of Session.

3. The petitioner is aggrieved by the order. He submits that the dictum in the decision reported in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) has not been given effect to. The vehicle is exposed to sun and

rain unnecessarily from 14/3/07. It may be ensured that the vehicle is not subjected to further loss and deterioration, prays the learned counsel for the petitioner.

4. The learned Public Prosecutor does not oppose the said prayer. However, the learned Public Prosecutor submits that the proceedings under Sec.67B of the Kerala Abkari Act are contemplated and the vehicle has been produced before the authorised officer under Sec.67B of the Abkari Act.

5. Admittedly, the confiscation proceedings have not commenced. No notice has been issued. Indefinite delay is not to be permitted. I am, in these circumstances, satisfied that subject to appropriate conditions the vehicle can be released to the petitioner.

6. In the result, this petition is allowed. The vehicle in question shall be released to the petitioner on the following terms and conditions:

(i) He shall produce all documents before the learned Magistrate to show that he is the person entitled to possession of the vehicle.

(ii) He shall execute a bond for the value of the vehicle to be fixed by the learned Magistrate with two solvent sureties each

for the like sum. The learned Magistrate must zealously ensure that the sureties offered are sufficient and solvent.

(iii) The petitioner shall in such bond undertake to produce the vehicle before the authority under Sec.67B of the Kerala Abkari Act as and when directed by such authority.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge